MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 9

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to public meetings	)	NOTICE OF PROPOSED ADOPTION
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 25, 2022, the Department of Administration proposes to adopt the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 25, 2022, to advise us of the nature of the accommodation that you need. Please contact Julie James, Department of Administration, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; Montana Relay Service 711, facsimile (406) 444-6194; or e-mail to Julie.James2@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I PUBLIC MEETINGS (1) Except as otherwise provided in 2-3-104, MCA, when the department holds a meeting as defined in 2-3-202, MCA, the department shall:

(a) post meeting or hearing notices, including advisory council and board meetings, a week or more ahead of time, but never less than 72 hours;

(b) post the meeting or hearing notice on the state's electronic calendar and on other appropriate locations on the department's website;

(c) provide personal notification (e.g., email) to those who have previously shown an interest in the matter;

(d) include adequate details of any proposed action;

(e) include a full agenda for any meeting or hearing with a time allotted for public comment;

(f) include a contact name, address, phone number, mailing, and email addresses for persons with disabilities who wish to participate in the public meeting; and

(g) incorporate public comment received at the meeting in the official minutes of the meeting.

(2) The department may hold meetings electronically or by other means of remote communication, so long as public participation is allowed as provided under Montana laws.

(3) The department may record meetings and use meeting recordings as official minutes as provided in 2-3-212, MCA.

AUTH: 2-3-103, 2-4-201, MCA
IMP: 2-3-103, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing this rule to adopt public participation guidelines which have been in place for years but not formally adopted into rule. This rule is intended to ensure that the public has a reasonable opportunity to participate in the department's deliberations and decisions that are of significant public interest.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., June 10, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 2 above no later than 5:00 p.m., May 25, 2022.

6. If the department receives requests for a public hearing on the proposed action from 25 persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 25 based on the number of citizens in Montana.

7. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrative rules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed adoption of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 3, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.3843 and 6.6.3850 pertaining to Credit for Reinsurance and Certified Assuming Insurers	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 1, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on May 24, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.3843 CERTIFICATION OF ASSUMING INSURERS - FILING REQUIREMENTS (1) and (2) remain the same.

(3) The assuming insurer must provide to the commissioner the following:

(a) and (b) remain the same.

(c) upon the initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor; thereafter, annually, reports of an independent auditor on the financial statements of the assuming insurer, the most recent audited financial statements ~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)~~, regulatory filings, and actuarial opinions (as filed with the assuming insurer's supervisor, with a translation into English);

(d) through (f) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

6.6.3850 CERTIFIED ASSUMING INSURERS - LEGAL ENTITY SECURITY RATING (1) Each certified reinsurer shall be rated on a legal entity basis, with due

consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(a) through (g) remain the same.

(h) for certified reinsurers not domiciled in the United States, audited financial statements ~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)~~, regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~three~~ two years filed with its non-United States jurisdiction supervisor;

(i) through (2) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Chapter 65, passed by the 67th Montana Legislature (effective March 23, 2021), amended 33-2-1216 and 33-2-1217, MCA, regarding credit for reinsurance, a practice regularly used in the insurance industry.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2021 were based on the NAIC model law regarding credit for reinsurance. The amendments to ARM 6.6.3843 and 6.6.3850 implement the statutory changes and are derived from the NAIC Credit for Reinsurance Model Regulation (#786), Section 8 (2019); they ensure uniformity with other states and are necessary to meet the NAIC accreditation standards.

The foregoing amendments are related to, and should have been included with, the proposed new rule and amendments set forth in the Notice of Public Hearing on Proposed Adoption and Amendment to adopt a new rule pertaining to credit for reinsurance and to amend ARM 6.6.3814 (MAR Notice No. 6-267 published on April 15, 2022).

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., June 10, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the potential for the actions to impact every insured person in Montana if domestic insurance companies choose to use a certified reinsurer.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.22.322, 24.22.327, 24.22.331, and 24.22.335 and the repeal of ARM 24.22.338 pertaining to incumbent worker training (IWT) program	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 9, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81010847021, Meeting ID: 810 1084 7021, Passcode: 834382; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 810 1084 7021, Passcode: 834382**.**

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Michelle Robinson, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3351, facsimile (406) 444-4140, or Montana Relay Service at 711; or e-mail Michelle.Robinson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.22.322 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

~~(3) "Department" means the Department of Labor and Industry.~~

~~(4) "Employer":~~

~~(a) means a for profit or non-profit business entity that:~~

~~(i) employs no more than 50 employees statewide; and~~

~~(ii) is properly registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association; but~~

~~(b) does not include governmental entities.~~

(5) remains the same but is renumbered (3).

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: There is reasonable necessity to repeal the definitions of "department" and "employer" because they are duplicative of the definitions set forth in statute.

24.22.327 GENERAL REQUIREMENTS REGARDING TRAINING

(1) through (2)(b) remain the same.

(c) an ~~other~~ entity or individual approved by the department, meeting the criteria contained in (3), to provide workforce training.

(3) An ~~"other~~ entity or individual~~"~~ may be approved by the department to provide workforce training~~,~~. The department may, in its discretion, reduce a grant or disapprove an individual or entity if the costs or rates are significantly in excess of costs or rates of similar training. The individual or entity may be approved based on one or more of the following criteria:

(a) through (6) remain the same.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: Reasonable necessity exists to amend the rule to clarify that a training provider may be rejected if the rates charged by the provider far exceed what appears to be reasonable and customary. The department retains the discretion to deny such trainers or award a lesser grant amount.

24.22.331 GRANT APPLICATION PROCESS (1) and (2) remain the same.

(3) The department shall verify that the applicant is an employer ~~that meets the definition in ARM 24.22.322~~ and that the information contained in the application is accurate and complete.

(4) through (10) remain the same.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: Reasonable necessity exists to amend this rule because the cross-referenced definition is proposed to be repealed in favor of the statutory definition of the term.

24.22.335 EVALUATION OF GRANT APPLICATIONS AND LIMITATIONS

(1) through (6)(a) remain the same.

(b) conferences, ~~or~~ except that training that occurs in conjunction with a conference may be permissible;

(c) and (d) remain the same.

(7) Grants are funded on the basis of the state fiscal year. Funding may not exceed:

(a) $1,000 per incumbent worker working an average of 20 to 34 hours a week, predominantly year round; and

(b) $2,000 per incumbent worker working an average of 35 or more hours a week, predominantly year round.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: Reasonable necessity exists to amend this rule to permit trainings that take place with a conference to be funded in instances where they meet the requirements of the program. While conferences generally do not meet the requirements of the IWT program because they do not individually upskill a worker, conferences sometimes have associated, targeting programming which does meet the purposes of the IWT program. The department is expanding its present rule to ensure that such training may be funded. Reasonable necessity exists to adopt (7) because it is transferred from ARM 24.22.338, the remainder of which is unnecessary due to a new grant application process. As such, the section is not new from what has previously been required.

4. The rule proposed to be repealed is as follows:

24.22.338 AWARD OF GRANT

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: Reasonable necessity exists to repeal this rule because the new application process for the grant will include the fiscal agreement and require the various documentation required to complete the grant process. Section (4) remains important and is therefore proposed to be recodified in ARM 24.22.335.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Michelle Robinson, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail Michelle.Robinson@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the

particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses in that these changes are primarily to form. That said, the IWT program significantly benefits small business in Montana by providing a means to upskill employees—a benefit to the workers and the employers. Changes incorporated in this proposal additionally facilitate a new application system, which is expected to make easier the application process for users.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.29.1402, 24.29.1433, 24.29.1534, 24.29.1538, and 24.29.1616 pertaining to medical fee schedules and drug formulary for workers' compensation purposes	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 8, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/87499059644, Meeting ID: 87499059644, Passcode: 769232; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 87499059644, Passcode: 769232.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 1, 2022, to advise us of the nature of the accommodation that you need. Please contact Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail celeste.ackerman@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) remains the same.

(a) For services provided on or after July 1, 2011, payment of medical claims must also be made in accordance with the utilization and treatment guidelines adopted by the department in ARM ~~24.29.1591~~ Title 24, chapter 29, subchapter 16.

(b) remains the same.

(c) A provider of medical treatment or services shall only be paid for services under this chapter if the bill for medical treatment or services is timely received by the employer or appropriate payer. Absent a showing of good cause, a bill for

treatment or services is timely received by the employer or appropriate payer when it is actually received within 365 days of the later of:

(i) the date of service; or

(ii) the date the provider of medical treatment or services knew the treatment or services was related to a claim for benefits under this chapter.

(2) through (10) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: There is a reasonable necessity to amend this rule to correct a reference to a repealed rule and to adopt a deadline for the timely filing of medical bills. The timely filing rule ensures that claim reserves are appropriate and helps prevent the reopening of closed claims for the sole purpose of a delayed bill submission to the employer or appropriate payer. Furthermore, twenty-one other states have adopted timely filing rules for medical bills in the workers' compensation context.

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(b) remain the same.

(c) The base rates and conversion formulas are established by the department~~:~~.

~~(i) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set for 2013," for services provided from July 1, 2013 through June 30, 2014;~~

~~(ii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014," for services provided from July 1, 2014, through June 30, 2015;~~

~~(iii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2015," for services provided from July 1, 2015, through June 30, 2016;~~

~~(iv) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2016," for services provided from July 1, 2016, through June 30, 2017;~~

~~(v) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017," for services provided from July 1, 2017, through June 30, 2018;~~

~~(vi) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2018," for services provided from July 1, 2018, through June 30, 2019;~~

~~(vii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2019," for services provided from July 1, 2019, through June 30, 2020;~~

~~(viii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2020," for services provided from July 1, 2020, through June 30, 2021; and~~

~~(ix) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2021."~~

(d) All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. A copy of any instruction set for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(2) through (10) remain the same.

(11) and (11)(a) remain the same.

~~(i) Effective July 1, 2013 through June 30, 2014, the base rate is $7,944.~~

~~(ii) Effective July 1, 2014 through June 30, 2015, the base rate is $7,984.~~

~~(iii) Effective July 1, 2015, through June 30, 2016, the base rate is $8,076.~~

~~(iv) Effective July 1, 2016, through June 30, 2017, the base rate is $8,120.~~

~~(v) Effective July 1, 2017, through June 30, 2018, the base rate is $8,201.~~

~~(vi) Effective July 1, 2018, through June 30, 2019, the base rate is $8,373.~~

~~(vii) Effective July 1, 2019, through June 30, 2020, the base rate is $8,599.~~

~~(viii) Effective July 1, 2020, through June 30, 2021, the base rate is $8,909.~~

~~(ix) Effective July 1, 2021, the base rate is $9,435.~~

(i) The base rate effective July 1, 2022, is $9,435.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. ~~For example, if the MS-DRG weight is 0.5, the amount payable is $4,717.50, which is the base rate of $9,435 multiplied by 0.5.~~

(c) through (12) remain the same.

(a) ~~The annual department-set base rate for outpatient service at acute care hospitals is:~~ The department may establish a base rate annually.

~~(i) $107, from July 1, 2013, through June 30, 2014;~~

~~(ii) $109, from July 1, 2014, through June 30, 2015;~~

~~(iii) $111, from July 1, 2015, through June 30, 2016;~~

~~(iv) $111, from July 1, 2016, through June 30, 2017;~~

~~(v) $114, from July 1, 2017, through June 30, 2018;~~

~~(vi) $116, from July 1, 2018, through June 30, 2019;~~

~~(vii) $119, from July 1, 2019, through June 30, 2020;~~

~~(viii) $123, from July 1, 2020, through June 30, 2021; and~~

~~(ix) $130, on or after July 1, 2021.~~

(i) The base rate effective July 1, 2022, is $130.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(b) The ~~annual department-set~~ department may establish a base rate annually for ASCs~~, which is~~ at 75 percent of the hospital outpatient base rate~~, is:~~.

~~(i) $80, from July 1, 2013, through June, 30, 2014;~~

~~(ii) $82, from July 1, 2014, through June 30, 2015;~~
~~(iii) $83, from July 1, 2015, through June 30, 2016;~~
~~(iv) $83, from July 1, 2016, through June 30, 2017;~~
~~(v) $86, from July 1, 2017, through June 30, 2018;~~
~~(vi) $87, from July 1, 2018, through June 30, 2019;~~
~~(vii) $89, from July 1, 2019, through June 30, 2020;~~
~~(viii) $92, from July 1, 2020, through June 30, 2021; and~~
~~(ix) $98, on or after July 1, 2021.~~

(i) The base rate effective July 1, 2022, is $98.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1433 to incorporate the annually updated medical fee schedules and related materials to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical rates and instruction sets can be accessed online and by contacting the department. The amendments also removed references to annually updated instruction sets which allows the department to update instruction sets as needed rather than only updating the instruction sets annually with the rates.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013. An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. A copy of the instruction sets for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

~~(a) the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instruction set affecting the determination of individual~~

~~fees apply. Copies of the current fee schedule and the instruction set may be obtained on the Employment Relations Division website;~~

~~(i) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set for 2013" applies to services provided from July 1, 2013 through June 30, 2014;~~

~~(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services provided from July 1, 2014 through June 30, 2015;~~

~~(iii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2015" applies to services provided from July 1, 2015, through June 30, 2016;~~

~~(iv) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2016" applies to services provided from July 1, 2016, through June 30, 2017;~~

~~(v) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017" applies to services provided from July 1, 2017, through June 30, 2018;~~

~~(vi) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2018" applies to services provided from July 1, 2018, through June 30, 2019;~~

~~(vii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2019" applies to services provided from July 1, 2019, through June 30, 2020;~~

~~(viii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2020" applies to services provided from July 1, 2020, through June 30, 2021; and~~

~~(ix) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2021" applies to services provided on or after July 1, 2021.~~

(b) through (f) remain the same but are renumbered (a) through (e).

(2) through (10) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1534 to incorporate the annually updated medical fee schedules and related materials to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical instruction sets can be accessed online and by contacting the department. The amendments also removed references to annually updated instruction sets which allows the department to update instruction sets as needed rather than only updating the instruction sets annually with the rates.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) and (2) remain the same.

~~(a) $63.45 from January 1, 2008, through December 31, 2008;~~

~~(b) $65.28 from January 1, 2009, through June 30, 2013;~~
~~(c) $60.52 from July 1, 2013, through June 30, 2014;~~
~~(d) $59.72 from July 1, 2014, through June 30, 2015;~~
~~(e) $61.49 from July 1, 2015, through June 30, 2016;~~
~~(f) $62.91 from July 1, 2016, through June 30, 2017;~~
~~(g) $62.92 from July 1, 2017, through June 30, 2018;~~
~~(h) $63.50 from July 1, 2018, through June 30, 2019;~~
~~(i) $64.04 from July 1, 2019, through June 30, 2020;~~
~~(j) $63.41 from July 1, 2020, through June 30, 2021; and~~
~~(k) $61.05 on or after July 1, 2021.~~
(a) $61.05 on or after July 1, 2022.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(3) remains the same.

~~(a) $57.20 from January 1, 2008, through December 31, 2008;~~
~~(b) $61.98 from January 1, 2009, through December 31, 2009;~~
~~(c) $60.97 from January 1, 2010, through June 30, 2013;~~
~~(d) $61.40 from July 1, 2013, through June 30, 2014;~~
~~(e) $62.98 from July 1, 2014, through June 30, 2015;~~
~~(f) $65.63 from July 1, 2015, through June 30, 2016;~~
~~(g) $63.86 from July 1, 2016, through June 30, 2017;~~
~~(h) $65.98 from July 1, 2017, through June 30, 2018;~~
~~(i) $66.97 from July 1, 2018, through June 30, 2019;~~
~~(j) $69.58 from July 1, 2019, through June 30, 2020;~~
~~(k) $67.32 from July 1, 2020, through June 30, 2021; and~~
~~(l) $64.84 on or after July 1, 2021.~~
(a) $64.84 on or after July 1, 2022.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1538 to incorporate the annually updated conversion factors to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical conversion factors sets can be accessed online and by contacting the department.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) through (2)(a) remain the same.

(b) for prescriptions written between January 1, 2020 through December 31, 2020, the October 2019 edition of the ODG Drug Formulary;

(c) for prescriptions written between January 1, 2021 through June 30, 2021, the October 2020 edition of the ODG Drug Formulary; ~~and~~

(d) for prescriptions written ~~on or after~~ between July 1, 2021 through June 30, 2022, the April 2021 edition of the ODG Drug Formulary~~.~~; and

(e) for prescriptions written on or after July 1, 2022, the April 2022 edition of the ODG Drug Formulary.

(3) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1616 because the department has adopted a commercial drug formulary. The drug formulary rule must be updated annually via the administrative rule amendment process in order to comply with the provisions of 39-71-704(3)(b)(i) and (ii), MCA (2021). The automatic monthly update process is expressly provided for by 2-4-307(8), MCA. Copies of the proposed 2022 ODG Drug Formulary are available and can be accessed online at: http://erd.dli.mt.gov/work-comp-claims/medical-regulations/formulary.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail celeste.ackerman@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

6. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

7. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

8. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 3, 2022.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.159.910, 24.159.911, and 24.159.1412, the adoption of NEW RULES I and II, and the repeal of ARM 24.159.406, 24.159.410, 24.159.416, 24.159.903, 24.159.1003, 24.159.1022, 24.159.1024, 24.159.1028, 24.159.1029, 24.159.1037, 24.159.1041, 24.159.1052, 24.159.1053, 24.159.1203, 24.159.1222, 24.159.1224, 24.159.1228, 24.159.1229, 24.159.1237, 24.159.1241, 24.159.1252, 24.159.1253, 24.159.1403, 24.159.1427, 24.159.1431, 24.159.1443, and 24.159.1601, pertaining to the Board of Nursing	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 3, 2022, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86856497677
Meeting ID: 868 5649 7677, Passcode: 848534
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 868 5649 7677, Passcode: 848534

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., on May 27, 2022, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 711; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.159.910 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE I (1) and (2) remain the same.

~~(3) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.~~

~~(4) Licenses shall be issued for one-year periods, and shall expire on the date set by ARM 24.101.413.~~

~~(5) Renewal forms must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-1-141, 37-8-101, 37-8-202, MCA

REASON: Sections (3) through (5) are proposed to be repealed because they are incorporated into New Rule I.

24.159.911 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE II (1) remains the same.

~~(2) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.~~

~~(3) Licenses shall be issued for one-year periods and shall expire on the date set by ARM 24.101.413.~~

~~(4) Renewal forms must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.~~

AUTH: 37-8-426, MCA
IMP: 37-8-423, 37-8-426, MCA

REASON: The sections in the foregoing two rules are proposed to be repealed because they are proposed to be incorporated into New Rule I. This recodification will assist applicants and the public utilize the rules by placing specifics regarding application processes together.

24.159.1412 APPLICATION FOR INITIAL APRN LICENSURE (1) remains the same.

~~(2) The applicant must submit the APRN application form provided by the department and the nonrefundable fee.~~

(3) through (5) remain the same but are renumbered (2) through (4).

~~(6) The board shall keep the application on file for one year. If the applicant fails to complete the requirements for application within one year, a new application must be submitted.~~

(7) and (8) remain the same but are renumbered (5) and (6).

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-1-134, 37-8-202, 37-8-409, MCA

REASON: There is reasonable necessity to repeal (2) and (6) because they have been incorporated into the requirements applicable to all license applicants in New Rule I.

4. The proposed new rules are as follows:

NEW RULE I APPLICATIONS AND RENEWALS (1) An applicant for licensure by the board must submit the required fees and completed application for the license sought. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

(2) To renew a license, which will be effective on the renewal date of ARM 24.101.413, the licensee must:

(a) fill out the renewal application and return it to the board by the date set in ARM 24.101.413;

(b) accompany the application with the renewal fee; and

(c) remit the late penalty set forth in ARM 24.101.403 if the renewal is postmarked after the renewal deadline.

(3) The provisions of ARM 24.101.408 apply to licenses issued by the board.

AUTH: 37-1-131, 37-1-141, 37-8-202, 37-8-405, 37-8-415, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-8-202, 37-8-405, 37-8-406, 37-8-409, 37-8-415, 37-8-416, 37-8-418, MCA

NEW RULE II LPN AND RN APPLICATIONS (1) In addition to the requirements of [NEW RULE I], an applicant for LPN or RN licensure must provide:

(a) license verification and, if not in English, a certified translation, from the state, territory, or country in which the applicant holds now, or has held previously, any professional license or credential; and

(b) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Endorsement applicants for LPN or RN licensure must currently hold the same license in good standing in another state, territory, or country.

(3) Examination applicants for LPN or RN licensure by examination shall transmit:

(a) proof of educational attainment:

(i) an official transcript, sent to the board directly from the educational institution, verifying date of graduation and degree or credential conferred; or

(ii) if educated internationally, results of a credentials review by a board-specified credentials review agency or another board of nursing that verifies the equivalency of the international LPN or RN education program to LPN or RN education programs in the United States; and

(b) proof of successful passage of NCLEX-PN or NCLEX-RN, as applicable:

(i) applicants must complete all educational requirements and the board must receive all credential prior to determining the applicant eligible to test; and

(ii) candidates failing the examination are not eligible to retest for a period determined by the testing entity and must submit an examination retake fee.

AUTH: 37-1-131, 37-1-141, 37-8-202, 37-8-405, 37-8-415, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-8-202, 37-8-405, 37-8-406, 37-8-409, 37-8-415, 37-8-416, 37-8-418, MCA

REASON: Reasonable necessity exists to adopt New Rules I and II in an effort to simplify for the public the administrative rules. Rather than have a renewal rule for each license type, the board proposes a single rule applicable to all licenses issued by the board.

5. The rules proposed to be repealed are as follows:

24.159.406 BOARD OBJECTIVES

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The rule is proposed to be repealed because it is duplicative of the board's obligations and authority set forth in statute.

24.159.410 DUTIES OF MEMBERS OF THE BOARD

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The rule is proposed to be repealed because it is duplicative of board member's obligations in code and in practice.

24.159.416 QUALIFICATIONS FOR EXECUTIVE DIRECTOR OF THE BOARD

AUTH: 37-8-202, MCA
IMP: 37-8-204, MCA

REASON: The rule is proposed to be repealed because it duplicates the qualifications for the executive officer which are set forth in statute.

24.159.903 PURPOSE OF STANDARDS OF PRACTICE FOR LICENSED MEDICATION AIDES

AUTH: 37-1-131, 37-8-202, 37-8-426, MCA
IMP: 37-8-101, 37-8-426, MCA

24.159.1003 PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE PRACTICAL NURSE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

24.159.1203 PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE REGISTERED NURSE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

24.159.1403 PURPOSE OF STANDARDS OF PRACTICE FOR THE ADVANCED PRACTICE REGISTERED NURSE

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

24.159.1601 PURPOSE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: The rules proposed to be repealed above merely set forth what is implied or explicit in the administrative rules and statutes governing the Board of Nursing and the practice of nursing—that the rules governing the practice do, in fact, govern the practice. As such, the rules may be repealed without impacting the substance of the administrative rules. Repealing them furthers the goals of the Red Tape Relief initiative of simplifying, shortening, and clarifying the administrative rules.

24.159.1041 VERIFICATION OF LICENSURE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-304, 37-8-202, MCA

24.159.1241 VERIFICATION OF LICENSURE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-304, 37-8-202, MCA

24.159.1431 VERIFICATION OF LICENSURE

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: The rules proposed to be repealed above provide contact information for verification of licensure status. This contact information need not be in

administrative rule and can be more easily provided to the public in other ways, such as on the Board of Nursing website.

24.159.1052 LICENSEE PROBATION OR REPRIMAND OF A LICENSEE

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-137, 37-1-316, MCA

24.159.1252 LICENSEE PROBATION OR REPRIMAND OF A LICENSEE

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-137, 37-1-316, MCA

REASON: The rules proposed to be repealed above duplicate board authority set forth in 37-1-312, MCA, and are therefore unnecessary to be repeated in rule.

24.159.1053 LICENSE REAPPLICATION CONSIDERATIONS AFTER DENIAL, REVOCATION, OR SUSPENSION

AUTH: 37-8-202, MCA
IMP: 37-1-136, 37-8-202, MCA

24.159.1253 LICENSE REAPPLICATION CONSIDERATIONS AFTER DENIAL, REVOCATION, OR SUSPENSION

AUTH: 37-8-202, MCA
IMP: 37-1-136, 37-8-202, MCA

24.159.1443 LICENSE REAPPLICATION AFTER DENIAL, REVOCATION, OR SUSPENSION

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-314, 37-8-202, MCA

REASON: The rules proposed to be repealed above are duplicative of the nonroutine application rules. The board is entitled to consider on an individual basis all applicants with a disciplinary history, as envisioned by these rules. As a result, these rules are unnecessary.

24.159.1024 LPN LICENSURE BY EXAMINATION

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA
IMP: 37-1-131, 37-8-415, 37-8-416, 37-8-418, MCA

24.159.1028 LPN LICENSURE BY ENDORSEMENT

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA

IMP: 37-1-131, 37-1-304, 37-8-415, 37-8-418, MCA

24.159.1029 LPN LICENSURE BY EXAMINATION FOR INTERNATIONALLY EDUCATED APPLICANTS

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA
IMP: 37-1-131, 37-8-415, 37-8-416, 37-8-418, MCA

24.159.1037 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-8-202, MCA
IMP: 37-1-134, 37-1-141, 37-8-202, MCA

24.159.1224 RN LICENSURE BY EXAMINATION

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA
IMP: 37-1-131, 37-1-134, 37-8-405, 37-8-406, MCA

24.159.1228 RN LICENSURE BY ENDORSEMENT

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA
IMP: 37-1-131, 37-1-134, 37-1-304, 37-8-405, MCA

24.159.1229 RN LICENSURE BY EXAMINATION FOR INTERNATIONALLY EDUCATED APPLICANTS

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA
IMP: 37-1-131, 37-1-134, 37-8-405, 37-8-406, MCA

24.159.1237 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-8-202, MCA
IMP: 37-1-134, 37-1-141, 37-8-202, MCA

24.159.1427 RENEWALS

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-8-202, MCA

REASON: The rules proposed to be repealed above are proposed to be consolidated into New Rules I and II. This repeal simplifies, shortens, and clarifies the administrative rules in furtherance of Red Tape Relief efforts.

24.159.1022 GENERAL REQUIREMENTS FOR LICENSURE

AUTH: 37-8-202, MCA
IMP: 37-8-406, 37-8-416, MCA

24.159.1222 GENERAL REQUIREMENTS FOR LICENSURE

AUTH: 37-8-202, MCA
IMP: 37-8-406, 37-8-416, MCA

REASON: Reasonable necessity exists to repeal the above rules because they are duplicative of requirements set forth in application requirements for LPNs and RNs, and are therefore unnecessary.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

7. An electronic copy of this notice of public hearing is available at https://nurse.mt.gov/ (department and board's website). Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to nurse@mt.gov; or by completing a request form at any rules hearing held by the board.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF NURSING
SARAH SPANGLER, RN,
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.225 pertaining to importation of camelids	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Livestock no later than 5:00 p.m. on June 6, 2022, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.3.225 CAMELIDS (1) Camelids may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211.

~~(2) Camelids must be officially tested negative to brucellosis within 30 days of entry into the state.~~

~~(3) Sexually intact camelids two months of age and older originating from a tuberculosis accredited free or tuberculosis modified accredited advanced U.S. state or zone require a negative axillary test within 60 days prior to importation.~~

~~(4) Sexually intact camelids two months of age and older originating from a tuberculosis modified accredited U.S. state or zone require one of the following:~~

~~(a) two negative axillary tests on all animals 60-120 days apart, with the second test occurring within 60 days prior to importation; or~~

~~(b) one negative single cervical test on all animals within 60 days prior to importation and part of a whole herd test within the previous 12 months; or~~

~~(c) one negative single cervical test on all animals within 60 days prior to importation and originate directly from an accredited tuberculosis free herd.~~

~~(5) Animals less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.~~

~~(6) All test results and dates, including herd accreditation numbers, shall be recorded on or attached to all copies of the animal's health certificate.~~

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

REASON: The department is proposing to eliminate import testing requirements for brucellosis and tuberculosis for camelids entering Montana. This proposed change is based on the lack of documented risk of either disease in camelids, the lack of validated tests for camelids for tuberculosis, and the value of aligning Montana's import requirements with other states.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Officer at the above address no later than 5:00 p.m., June 10, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3 persons based on estimated number of llama producers in Montana and potential exhibitors of show llamas that may visit yearly.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Darcy Alm*
Darcy Alm
Rule Reviewer

/s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.905 regarding the Horse Creek Controlled Groundwater Area	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 21, 2022, at 6:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Cobblestone Community Center, 203 S. Woodward Avenue, Absarokee, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 27, 2022, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail jsprice@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.12.905 HORSE CREEK CONTROLLED GROUNDWATER AREA

(1) and (1)(a) remain the same.

(b) a map of the area within the HCCGWA is posted on the department's website. ~~at http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/horse-creek.~~

(2) through (6) remain the same.

(7) Water use for lawn and garden irrigation under all water rights issued after the effective date of this rule that do not have mitigation will be discontinued when the 90-day ~~three-month~~ standard precipitation index (SPI) is less than or equal to -1.

(a) The 90-day ~~three-month~~ SPI will be taken at the center of section 15, T4S, R18E, from the Upper Missouri River Basin (UMRB) Drought Indicators Dashboard. ~~calculated by the department using precipitation data from the National Weather Service station in Fishtail, Montana, which is available at http://mesowest.utah.edu/index.html.~~

(b) The department will post on the department's website the 90-day ~~three-month~~ SPI and the link to the UMRB website at the beginning of each of the irrigation season months of May, June, July, August, and September. ~~at http://www.dnrc.mt.gov/wrd/water_rts/cgwa/horsecreek/default.asp.~~

(8) remains the same.

AUTH: 85-2-506, 85-2-508, MCA

IMP: 85-2-506, 85-2-508, MCA

REASON: The National Weather Service station at Fishtail, Montana, has been discontinued. The SPI (standard precipitation index) is available from an alternative source and no change to the metric for low precipitation would be required. No restrictions on lawn and garden watering can be initiated without a source for the 90-day SPI. The proposed new data source uses a 90-day average rather than three months necessitating the interval change.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6835, or e-mail at MBalukas@mt.gov, and must be received no later than 5:00 p.m. on June 22, 2022.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.34.3005 pertaining to developmental disabilities waiver programs reimbursement	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 2, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/86440818807?pwd=aHRTb25vcmdBeG5laFlhUTAvMXRlUT09, meeting ID: 864 4081 8807 and password 855877; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 864 4081 8807. Find your local number: https://mt-gov.zoom.us/u/kdwtS4ixnf.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 27, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement ~~for~~ and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Services Manual, effective ~~July 1, 2021~~ July 1, 2022. A copy of the manual may be obtained through the Department of Public Health and Human Services, ~~Developmental Services~~ Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at ~~http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf~~ https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to reimbursement rates in the Montana Developmental Disabilities Program Services Manual.

The rule amendment would adopt and incorporate the updated version of the manual, dated July 1, 2022, to include a waiver definition update to remote monitoring, the allowance of retainer days for day supports and activities, and changes in billing and reimbursement of services provided to persons who are recipients of developmental disabilities services through the Medicaid programs.

Based on legislative appropriations in the 2021 legislative session, the Developmental Disabilities Program proposes to implement a 1.9% average provider rate increase to provider rates, and through increased rates apply money appropriated by the 2021 Legislative Session for workers who provide direct care to people with developmental disabilities. These rate adjustments are reflected in the proposed manual, dated July 1, 2022.

ARM 37.34.3005(2)
The proposed amendment would give an approximate 1.9% increase to Medicaid waiver services and distribute an additional $990,290 to waiver services through rate setting for recruitment and retention of direct care workers, with an effective date of July 1, 2022. The combined weighted average increase for waiver services is estimated at 2.7%.

The proposed amendment would apply both increases to all waiver services except:

Individual Goods and Services
Remote Monitoring Equipment
Specialized Medical Equipment and Supplies
Environmental Modifications
Personal Emergency Response System
Community Transition Services

The following Extended State Plan services will receive updates per their established Medicaid State Plan rate methodologies:

Private Duty Nursing (Medicaid State Plan) LPN
Private Duty Nursing (Medicaid State Plan) RN
Psychological Services
Physical Therapy (Medicaid State Plan)
Occupational Therapy (Medicaid State Plan)

Speech Therapy (Medicaid State Plan)
Nutritionist Services (Medicaid State Plan)

The proposed Montana Developmental Disabilities Program Services Manual dated July 1, 2022, can be found at https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf.

Fiscal Impact

Waiver rate increases - The provider rate increases are projected to have the following fiscal impact:

1.9% provider rate increase:

SFY 2023 General Fund Increase	SFY 2023 Federal Fund Increase	SFY 2023 Total Fund Increase
$859,810	$1,589,791	$2,449,601

Direct care recruitment and retention increase:

SFY 2023 General Fund Increase	SFY 2023 Federal Fund Increase	SFY 2023 Total Fund Increase
$347,592	$642,698	$990,290

The department intends for the proposed amendments to be effective retroactive to July 1, 2022.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State May 3, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V pertaining to election security definitions, security assessment requirements, security awareness training requirements, physical security requirements, and additional election security requirements; and the amendment of ARM 44.3.1701 pertaining to definitions related to the examination of voting machines and devices	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 5, 2022, the Secretary of State submitted MAR Notice No. 44-2-255 to be published on April 15, 2022, on page 507 of the 2022 Montana Administrative Register, Issue Number 7. Due to a court order halting all activity related to HB 530 (2021 Legislature), public notice regarding the notice was not provided. Given the modification to the court order on April 22, 2022, the Secretary of State is resuming the proposed rule activity.

2. On June 3, 2022, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

3. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., May 27, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

4. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Election security" means the process of implementing and maintaining protective measures that preserve the confidentiality, integrity, and availability of the election process. This includes network and information security as well as physical security.

(2) "Endpoint detection and response tool(s)" or "EDR tool(s)" means a software that continually monitors end-user devices to detect and respond to cyber threats.

(3) "Qualified assessor" means a security professional who, at the time of engagement, is certified and in good standing with at least of one of the following security credentials which require passing an exam covering related security subject matter and possessing the required amount of relevant information security work experience (based on certification requirements in effect on April 15, 2022):

(a) Certified Authorization Professional (CAP). The requirements to obtain a CAP credential can be found at https://www.isc2.org;

(b) Certified Information Security Manager (CISM). The requirements to obtain a CISM credential can be found at https://www.isaca.org;

(c) Certified Information Systems Auditor (CISA). The requirements to obtain a CISA credential can be found at https://www.isaca.org;

(d) Certified Information Systems Security Professional (CISSP). The requirements to obtain a CISSP credential can be found at https://www.isc2.org;

(e) Certified in Risk and Information Systems Control (CRISC). The requirements to obtain a CRISC credential can be found at https://www.isaca.org;

(f) GIAC Critical Controls Certification (GCCC). The requirements to obtain a GCCC credential can be found at https://www.giac.org;

(g) GIAC Security Leadership Certification (GSLC). The requirements to obtain a GSLC credential can be found at https://www.giac.org; or

(h) GIAC Systems and Network Auditor (GSNA). The requirements to obtain a GSNA credential can be found at https://www.giac.org.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated, "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule I to clarify definitions of terms used within this subchapter in response to the legislative audit recommendation and to fulfill the requirements of the new law. In addition, the definition of "qualified assessor" outlines the required credentials for completing the security assessments to ensure those performing the review have the knowledge and training necessary to adequately complete the assessment.

NEW RULE II ANNUAL SECURITY ASSESSMENTS (1) Election security practices performed at county election offices shall be annually assessed based on controls derived from one of the following frameworks that detail security best practices for mitigating security risks to an organization:

(a) the National Institute of Standards and Technology's "Framework for Improving Critical Infrastructure Cybersecurity," Version 1.1, published April 16, 2018, found at https://www.nist.gov;

(b) the National Institute of Standards and Technology's Special Publication 800-53 Revision 5 titled "Security and Privacy Controls for Information Systems and Organizations," published December 10, 2020, found at https://www.nist.gov;

(c) the Center for Internet Security's "CIS Critical Security Controls," Version 8, published May 2021, found at https://www.cisecurity.org; or

(d) the Center for Internet Security's "A Handbook for Elections Infrastructure," version 1.0, published February 2018, found at https://www.cisecurity.org.

(2) Assessments shall be performed according to the following schedule:

(a) at least once every three years, the security assessment shall be performed by an independent, third-party, and qualified assessor; and

(b) during all other years, the security assessments may be performed using a self-assessment conducted through the Nationwide Cybersecurity Review (NCSR) based on requirements as of April 15, 2022, and found at https://www.cisecurity.org/, or the Election Infrastructure Assessment Tool (EIAT) based on requirements as of April 15, 2022, and found at https://www.cisecurity.org/. These tools detail the security best practices for mitigating security risks to an organization.

(3) County election administrators shall maintain storage of security assessment results according to the local government records retention schedule.

(4) County election administrators shall provide the results of the assessments to the Secretary of State in January of each calendar year. The results provided to the Secretary of State will include a management description detailing the controls assessed and the effectiveness of each control. The management description shall include the name and qualification of the assessor including their security credential's verification, certification, or identification number.

(5) Security assessments are considered confidential information as defined in 2-6-1002(1), MCA. Security assessment results and supporting security information are prohibited from disclosure to the public.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule II in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Election infrastructure is considered critical infrastructure with a higher impact and likelihood of security risks. HB 530 required counties to conduct annual security

assessments which will identify current threats and risks to their office and identify the effectiveness of their security controls at mitigating those threats and risks. New Rule II provides clarification on the framework that should be used to conduct the security assessments to ensure adequacy and consistency of the reviews. New Rule II also outlines the format of the results to be provided to the Secretary of State.

NEW RULE III ANNUAL SECURITY AWARENESS TRAINING (1) All county and state elections staff shall complete security awareness training at least once per year.

(2) The security awareness training will be provided by the Secretary of State. The Secretary of State may approve equivalent security awareness training on a case-by-case basis.

(3) The county election administrator shall maintain records of their election staff's completion of the security awareness training in accordance with the local government records retention schedule.

(4) The county election administrator shall provide the Secretary of State with records of their election staff's completion of the security awareness training within two weeks after the end of each annual training cycle.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule III in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Phishing emails are one of the biggest threats to a county election office. Security awareness training is a measure to mitigate the threat by ensuring election staff can identify phishing emails. New Rule III implements an annual security awareness training requirement and outlines what should be done with those records.

NEW RULE IV PHYSICAL SECURITY (1) Any type of component that is used within a voting system as defined in 13-1-101, MCA, shall be physically secured using tamperproof seals and access control to prevent unauthorized tampering or use.

(2) County election administrators shall maintain a record and a chain of custody for any type of component that is used within a voting system as defined in 13-1-101, MCA, and any keys, cards, fobs, or other controls used to access election-related equipment or storage locations.

(a) County election administrators shall document records and chains of custody on forms prescribed by the Secretary of State and located on the Secretary of State website.

(b) The chain of custody shall be documented every time there is a change in custody of the items or a removal of a tamperproof seal.

(c) The chain of custody records shall be maintained according to the local government records retention schedule.

(3) For each election, county election administrators shall perform a reconciliation comparing the number of ballots printed to the number of issued, voided, or unissued ballots.

(a) Ballot reconciliations shall be completed prior to the start of the county canvass.

(b) Ballot reconciliations shall be maintained according to applicable federal or local government records retention schedules.

(4) Based on security best practices, it is recommended that the room or other areas where ballots are opened, processed, tabulated, or hand-counted be surveilled during the time that such activities are performed.

(a) Surveillance devices should be positioned to view and record all activities related to opening, processing, and tabulating or hand-counting ballots except that the devices must be positioned so that ballot secrecy is maintained.

(b) The storage of surveillance device footage shall be maintained according to applicable federal or local government records retention schedules.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated, "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements." On page 11, the report indicated that SOS should adopt rules clarifying election security measures that "include physical security of voting technology assets, such as tabulators, USB flash drives, and various computers." The audit noted, "This would assist counties in understanding what is necessary for securing voting systems before, during, and after an election."

The Office of the Secretary of State is proposing New Rule IV in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Physical security is a large component of security at a county election office. Voting system components and ballots need to be physically secured to prevent unauthorized access and manipulation. Access control, chain of custody, surveillance, and ballot reconciliations are measures being proposed to mitigate and detect unauthorized access and manipulation.

NEW RULE V OTHER ELECTION SECURITY REQUIREMENTS (1) Any type of component that is used within a voting system as defined in 13-1-101, MCA, shall not be connected to a computer network at any time.

(2) Workstations, desktops, laptops, or other computing devices used by county election departments and connected to a computer network shall have endpoint detection and response (EDR) tools or anti-virus software installed, operating as recommended by the vendor and updated with the latest signatures or other version as required and supported by the vendor.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the information systems audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule V in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Endpoint detection and anti-virus software are technical controls to mitigate the high risk of malware and ransomware. Voting systems that are connected to a network increase the threat landscape of election infrastructure to an unnecessary level.

5. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) remains the same.

(2) Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) through (c) remain the same.

(d) "Device" means a "voter interface device" as defined in 13-1-101, MCA. ~~an apparatus used for voting by the process of marking of a ballot. Ballots are counted using automatic tabulating equipment.~~

(e) through (g) remain the same.

~~(h) "Marking device" means any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.~~

~~(i)~~ (h) "System" means a "voter interface device" and "voting system" as defined in 13-1-101, MCA. ~~includes a self-contained mechanical voting machine or an electronic voting device and the individual components of each.~~

~~(j)~~ (i) "Voting machine" means a "voting system" as defined in 13-1-101, MCA. ~~mechanical apparatus on which to cast votes.~~

(3) through (7) remain the same.

AUTH: 13-1-202, 13-17-103, 13-17-107, MCA
IMP: 13-1-202, 13-17-101, 13-17-103, MCA

REASONABLE NECESSITY: In August 2020, the Montana Legislative Audit Division released the information systems audit related to the "Security and Maintenance of Montana Election Systems." On page 11 of the report, it was noted that the definition of "voting system" in 13-1-101, MCA, and definitions for voting machines and devices in ARM 44.3.1701 were not consistent.

The proposed changes to ARM 44.3.1701 are responsive to the recommendation.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

7. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Representative McKamey, was contacted by email on October 19, 2021, and on January 27, 2022.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 3rd day of May, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IV pertaining to Minor Parties	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On June 3, 2022, at 9:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., May 22, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Elector" means an individual qualified and registered to vote under state law.

(2) "Legislative district" means a representative district as provided in Article V, section 14(1) of the Montana Constitution.

(3) "Verify" with respect to the signature of an elector means that the elector's signature on the petition, when taken as a whole, bears sufficient similarity to the signature on their voter registration and that the signatures are substantially the same. If one signature uses an elector's first, middle, and last names, the use of an initial instead of either the first or middle name, but not both, in the other shall not, by itself, result in a non-verified signature.

AUTH: 13-10-613, MCA
IMP: 13-10-601, 13-10-607, 13-10-608, MCA

NEW RULE II FORM AND SUBMISSION OF PETITIONS TO NOMINATE A POLITICAL PARTY'S CANDIDATES BY PRIMARY ELECTION (1) Any elector, regardless of party affiliation, may present a petition to qualify a political party that does not already qualify to hold a primary election under 13-10-601(1), MCA, to nominate its candidates by primary election. Presented petitions must:

(a) be completed in the form prescribed by the Secretary of State;

(b) be signed by a number of electors equal to the lesser of five percent or more of the total votes cast statewide for the successful candidate for governor at the last general election or 5,000 electors;

(c) be signed by at least 150 electors in at least one-third of legislative house districts; and

(d) have attached to each sheet of the petition a completed verification affidavit for the petition's signatures in the form prescribed by the Secretary of State; and be submitted with original signatures and their verification, as provided in (3), to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than one year and no later than 123 days before the date for the next primary election.

(2) Petitions may be submitted to the county official responsible for registration in whole or in individual sheets or portions of petitions. The petitioning elector shall notify the county official responsible for registration when the final sheet or portion of the petition has been submitted. After this notification, no elector may withdraw their signature from the petition.

(3) The form prescribed by the Secretary of State for petitions under this subchapter shall include at the top of each page a title that identifies the petition as follows: "Petition to Qualify the [Insert Name] Party as a Political Party Eligible to Nominate its Candidates by Primary Election in Montana." The petition shall include a separate, numbered line extending across the entire page for each elector's signature and identifying information all of which must be entered in ink. The first underlined space on each numbered line shall be labeled as and used for the signature of the elector. The second underlined space on each line shall be labeled as and used for the date of the elector's signature. The third underlined space on each line shall be labeled as and used for the elector's present legal address or phone number. The fourth space on each line shall be labeled as and used to identify the elector's county of residence. The fifth space on each line shall be labeled as and used for the printed last name and first and middle initials of the signer. The end of each page of the petition form shall have the affidavit of circulation required under 13-10-607, MCA, to be completed by the signature gatherer(s).

AUTH: 13-10-613, MCA
IMP: 13-10-601, 13-10-606, 13-10-607, 13-10-609, MCA

NEW RULE III VERIFICATION OF ELECTOR SIGNATURES BY COUNTY ELECTION OFFICIALS AND TALLY REPORTING (1) Upon receipt of each petition sheet submitted on the petition form prescribed by the Secretary of State and containing a completed affidavit of circulation required under [New Rule II(1)(c)], the county official responsible for registration of electors, or their designee, shall:

(a) determine whether each signatory on the petition sheet is a registered voter in the county, and if so which legislative district that elector is registered;

(b) verify the signature of each elector signing the petition by comparing each elector's petition signature with the signature of that elector as it appears in the records of the county election office; and

(c) determine the total number of verified electors in the county who have signed the petition and how many of the electors reside in each legislative district contained in whole or in part within the county.

AUTH: 13-10-613, MCA
IMP: 13-10-608, 13-10-609, MCA

NEW RULE IV WITHDRAWAL OF ELECTOR SIGNATURES FROM PETITIONS (1) Any time prior to the notification of a final submission of a petition to a county's election official under [New Rule II(2)], an elector may request to withdraw their signature from a petition submitted under this subchapter.

(2) The county election administrator may withdraw an elector's signature after the identity of the requesting elector has been verified using the same manner the identities of applicants for regular voter registration are verified.

AUTH: 13-10-613, MCA
IMP: 13-10-606, MCA

REASONABLE NECESSITY: On April 30, 2021, the Governor of Montana signed into law Senate Bill (SB) 350. SB 350 revised laws related to minor parties and added eight new sections to Title 13, chapter 10, part 6, MCA, codified as 13-10-606 through 13-10-613, MCA. The Office of the Secretary of State is proposing New Rules I through IV to implement the changes in statute. These sections provided new procedures for petitions for political parties that do not already qualify to nominate their candidates by primary elections to so qualify. The new rules proposed in this notice are necessary to provide clear, uniform direction to those collecting voter signatures and submitting the petition sheets to the various county election administrators. They are also necessary to provide statewide, uniform procedures for county election administrators to follow when accepting such petition sheets, verifying elector signatures on such petitions, determining treatment of elector requests to withdraw their petition signature, signature tallying, record retention, and the timing and content of the reporting required by county election administrators to the Secretary of State. Without these rules, procedures to handle these matters would inevitably vary county to county. Finally, the new rules are necessary to comply with Federal Court findings and orders declaring certain parts of Montana statutes and SB 350 relating to minor party petitions unconstitutional. See, *Montana Green Party v. Jacobsen*, 17 F.4th 919 (9th Cir. 2021) (holding unequal petition requirements in different State House districts is in violation of the right to equal protection under the Fourteenth Amendment of the U.S. Constitution).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. A written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to the office at sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Hertz, was contacted by email on December 27, 2021, and on April 15, 2022.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ ANGELA NUNN
Angela Nunn
Chief Deputy Secretary of State

Dated this 3rd day of May, 2022.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.11.6702 pertaining to walk/wade sections and the repeal of ARM 12.11.6706 pertaining to rest/rotation on the Madison River	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 19, 2021, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-553 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 1609 of the 2021 Montana Administrative Register, Issue Number 22.

2. The commission has repealed ARM 12.11.6706 as proposed.

3. The commission has amended ARM 12.11.6702, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.11.6702 WALK/WADE SECTIONS OF MADISON RIVER ~~(1)~~ (2) Fishing from a boat or vessel is prohibited from Ennis ~~Fishing Access Site~~ Bridge to Ennis Reservoir.

~~(2)~~ (1) Fishing from a boat or vessel is prohibited from the outlet of Quake Lake to ~~Raynolds Pass Fishing Access Site~~ Lyons Bridge.

~~(3) Fishing from a boat or vessel is prohibited from Raynolds Pass Fishing Access Site to Lyons Bridge Fishing Access Site except on Saturdays and Sunday from June 15 to September 30.~~

~~(4)~~ (3) ARM 12.11.6702 will be implemented as a trial program in January 1, 2022 unless adjusted by the work group as prescribed in ARM 12.11.6710.

~~(5)~~ (4) The commission will review ARM 12.11.6702 in 2023 as prescribed by ARM 12.11.6711.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

4. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

Comment 1: The commission received one comment inquiring if the repeal of walk/wade sections in ARM 12.11.6702 would repeal just the recent changes made in administrative rule or include the walk/wade sections that have been established on the Madison River for decades in the fishing regulations.

Response 1: This comment and phone calls with similar questions prompted the department to evaluate the intent of the work group and the possible unintended consequences of the proposed repeal of ARM 12.11.6702. Instead of repealing the walk/wade sections that were adopted in administrative rule, the commission chose to amend ARM 12.11.6702, adopting the walk/wade sections that have been established in the fishing regulations for decades. The amendments to ARM 12.11.6702 will result in the administrative rule and the fishing regulations having the same language, which will prevent any confusion as to whether fishing from a boat is prohibited or not and in which sections.

Comment 2: The commission received several comments inquiring about the Madison River Work Group. The comments asked about the composition of the Madison River Work Group, how to become a member, and where to find information about the work group meetings including minutes.

Response 2: ARM 12.11.6710 states the Madison River Work Group will consist of three commercial outfitters with a current Madison River Special Recreational Use Permit, three non-commercial Madison River users, two individuals with a Madison Valley business interest not connected to commercial outfitting, one member trained in natural resources management and not currently working for the Department of Fish, Wildlife and Parks, one representative from the Fish and Wildlife Commission, one representative from the Bureau of Land Management, and one at-large member whose selected qualities are largely outside the above descriptions for other work group members. The members of the working group are appointed for three years.

The commission selected the members from a pool of applicants. If a vacancy should occur, the commission will solicit for applicants that meet the required position that is vacated. The commission will solicit for applicants prior to the three-year term of the current members expires.

Minutes are not kept for work group meetings; however, recordings of the meetings and all other information regarding the work group is available on the Department of Fish, Wildlife and Park's website: https://fwp.mt.gov/aboutfwp/madison-river-workgroup.

Comment 3: The commission received almost 200 comments opposed to repealing ARM 12.11.6702 and 12.11.6710 stating the rules were a collaborative effort of several groups to address crowding on the Madison River and to protect the fishery, the representation that there is no support for these rules is incorrect, repealing the rules before they are implemented will circumvent the intent of the rules, and the rules should be implemented and studied before further action is taken.

Response 3: In 2020, the commission proposed rule language based on two petitions submitted by various sportsmen groups, that was adopted as the Madison River Recreation Management rules. As part of that collaborative effort, the commission adopted ARM 12.11.6710 establishing the Madison River Work Group.

The work group is responsible for considering and recommending rules or changes to rules for the Madison River.

The commission is aware of the concerns surrounding crowding. ARM 12.11.6705 capped commercial use at the number of trips reported in 2019 or 2020, whichever is higher. The commission is maintaining the commercial use cap. In addition, ARM 12.11.6701 requires all users recreating on the Madison River, whether commercial or non-commercial, to report their use as prescribed by the department. The information provided by these reports will help guide future management decisions.

The commission is dedicated to protecting the fishery of the Madison River and the state of Montana. The Department of Fish, Wildlife and Parks (department) monitors the fish populations within the state and if necessary, will take any proposals to the commission including any potential fishing regulation changes.

When the Madison River Recreation Management rules were proposed in 2020, the commission received comments in support and in opposition of the rules. Similarly, the commission received comments supporting and opposing the proposed repeal of the walk/wade sections and the rest/rotation sections. The commission reads and evaluates all comments received as part of making a reasoned and informed decision. It is not a vote or a tally. The work group members recommended repealing the rules because they received reports and comments at their meetings indicating a lack of support.

An unintended consequence of the proposed repeal of ARM 12.11.6702, was confusion as to whether the long-established walk/wade sections found in the fishing regulations would remain. It was the work group's intention for the walk/wade sections listed in the regulations to remain, and the sections established in the administrative rule to be removed. The commission amended ARM 12.11.6702, adopting the walk/wade sections that have been established in the fishing regulations for decades. The amendments to ARM 12.11.6702 will prevent confusion as to whether fishing from a boat is prohibited or not and in which sections because the administrative rule and the fishing regulations will have the same language.

Comment 4: The commission received multiple comments concerned with the amount of commercial use of the Madison River and its potential impacts.

Response 4: In 2021, the commission adopted ARM 12.11.6705, capping the total number of fishing outfitting and guided trips per individual outfitter and guide at the number of trips reported in 2019 or 2020, whichever is higher.

Comment 5: The commission received several comments inquiring about the work group's rationale for recommending repealing ARM 12.11.6702 and 12.11.6706 to the commission.

Response 5: The work group recommended repealing because they received reports and comments at their meetings indicating a lack of support for the rules as written.

Comment 6: The commission received almost 140 comments in support of repealing ARM 12.11.6702 and 12.11.6706. Most of the comments received regarding the repeal of ARM 12.11.6702, specifically voiced support for the walk/wade sections that have been established in the fishing regulations for decades. Several of the comments received stated that the rest/rotation sections will concentrate the use and increase the pressure in the open sections of the river causing the opposite effect of what the commission originally intended.

Response 6: The commission appreciates the public's participation in this rulemaking process, including those who support the proposed actions and those who oppose them. It was the work group's intention for the walk/wade sections found in the fishing regulations to remain and that the sections established in the administrative rule be removed. An unintended consequence of the proposed repeal of ARM 12.11.6702, was confusion as to whether the long-established walk/wade sections found in the fishing regulations would remain. To address this confusion, the commission amended ARM 12.11.6702, adopting the walk/wade sections that have been established in the fishing regulations for decades. The amendments to ARM 12.11.6702 will prevent confusion as to whether fishing from a boat is prohibited or not and in which sections because the administrative rule and the fishing regulations will have the same language.

The commission repealed ARM 12.11.6706 due to concerns that prohibiting outfitters and guides from conducting business from June 15 to September 30 on two sections of the river on the weekends would concentrate use into the open sections of the river on those days.

Comment 7: The commission received several comments opposed to repealing ARM 12.11.6706 because the rule provided a section a river free from commercial activity on the weekends. The comments expressed a preference for expanding this approach to more sections of the river and on additional days.

Response 7: The commission repealed ARM 12.11.6706 due to the concerns that prohibiting outfitters and guides from conducting business from June 15 to September 30 on two sections of the river on the weekends would concentrate use into the open sections of the river on those days.

Comment 8: The commission received comments stating rules should be adopted restricting commercial and non-commercial use.

Response 8: ARM 12.11.6701 requires all users recreating on the Madison River, whether commercial or non-commercial, to report their use as prescribed by the department. The information provided by these reports will help guide future management decisions and help to understand associated activities and impacts.

Comment 9: The commission received multiple comments opposed to repealing ARM 12.11.6702 and 12.11.6706, with some suggesting even more restrictions due to concerns of fish populations especially due to the recent failure of Hebgen Dam.

Response 9: The commission is dedicated to protecting the Madison River fishery. The department monitors the fish populations within the state and if necessary, the department will notify the commission of any concerns regarding the fish populations.

Comment 10: The commission received one comment stating an independent third party should select the members of the work group and that outfitters and guides should not be represented.

Response 10: In 2020, the commission adopted ARM 12.11.6710, establishing the Madison River Work Group as part of a collaborative effort with multiple sportsmen groups that submitted two separate petitions to address use of the Madison River. Membership of the work group was selected so that all interest groups would be represented.

Comment 11: The commission received one comment suggesting that the number of people on the river should be limited based on CFS (cubic feet per second) and temperature of the river.

Response 11: Pursuant to ARM 12.5.507, the department may implement angling restrictions or fishing closures due to high water temperatures or low water flows.

Comment 12: The commission received two comments stating boats should not be permitted in the walk/wade sections.

Response 12: The commission amended ARM 12.11.6702, adopting the long-established walk/wade sections that have been in the fishing regulations. For decades, the fishing regulations have defined "closed to fishing from boats/vessels" to mean, anglers may not fish from a boat or vessel, but may use a boat or vessel to access wade fishing opportunities. Neither the work group nor the commission considered changing the means of accessing these sections.

Comment 13: The commission received two comments expressing support for a river ambassador program to be implemented on the Madison River. The ambassador program can be used to collect information regarding the use of the river or assist with getting boats on and off the river faster.

Response 13: The work group has discussed the benefits of an ambassador program including assisting getting people on the river quicker; however, the work group has not presented any recommendations for an ambassador program to the commission for consideration.

Comment 14: The commission received one comment with concerns that the commission was not making science-based decisions.

Response 14: The commission's river recreation use rules require the commission to consider many things including biological and social information when adopting, amending, or repealing rules regarding recreational use on a river.

Comment 15: The commission received one comment requesting the regulations on the Madison River be enforced.

Response 15: The commission appreciates the feedback and has passed the concerns along to the department enforcement personnel.

Comment 16: The commission received two comments stating the department and commission do not have the authority to make or change laws by claiming them to be rules.

Response 16: The commission is provided the authority to adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public, 87-1-303, MCA. The commission is not making or changing any laws through this or any other rulemaking process.

Comment 17: The commission received one comment suggesting that ARM 12.11.6702 be amended to allow for fishing from an inflatable craft.

Response 17: The commission amended ARM 12.11.6702, adopting the long-established walk/wade sections that have been in the fishing regulations. For decades, the fishing regulations have defined "closed to fishing from boats/vessels" to mean, anglers may not fish from a boat or vessel, but may use a boat or vessel to access wade fishing opportunities. Neither the work group nor the commission considered changing the means of accessing these sections.

Comment 18: The commission received one comment suggesting a restriction on the use of anchors on the Madison River upstream of Ennis Reservoir when an angler is fishing to prevent conflicts between wade anglers and float anglers.

Response 18: For decades, the fishing regulations have defined "closed to fishing from boats/vessels" to mean, anglers may not fish from a boat or vessel, but may use a boat or vessel to access wade fishing opportunities. The commission did not consider changing the means of accessing these sections.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III, the amendment of ARM 17.53.105, 17.53.107, 17.53.111, 17.53.112, 17.53.113, 17.53.301, 17.53.502, 17.53.602, 17.53.603, 17.53.701, 17.53.802, 17.53.902, 17.53.1002, and 17.53.1302, and the repeal of ARM 17.53.401, 17.53.402, and 17.53.403 pertaining to incorporation by reference and hazardous waste fees	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On January 14, 2022, the Department of Environmental Quality (department) published MAR Notice No. 17-418 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 14 of the 2022 Montana Administrative Register, Issue No. 1.

2. The department has adopted NEW RULES I (17.53.404), II (17.53.405), and III (17.53.406) as proposed.

3. The department has amended ARM 17.53.105, 17.53.107, 17.53.111, 17.53.112, 17.53.113, 17.53.301, 17.53.502, 17.53.602, 17.53.603, 17.53.701, 17.53.802, 17.53.902, 17.53.1002, and 17.53.1302 as proposed.

4. The department has repealed ARM 17.53.401, 17.53.402, and 17.53.403 as proposed.

5. The department has thoroughly considered the comments made. A summary of the comments and the department's responses are as follows:

COMMENT 1: Two commenters stated general support for the proposed rule changes.

RESPONSE 1: The department appreciates the comments.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.802 pertaining to Incorporation by Reference of 40 CFR Part 51, Appendix W	))))	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On March 25, 2022, the Department of Environmental Quality (department) published MAR Notice No. 17-419 pertaining to the proposed amendment of the above-stated rule at page 392 of the 2022 Montana Administrative Register, Issue No. 6.

2. The department has amended ARM 17.8.802 as proposed.

3. The department did not receive any public comments pertaining to this amendment.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State May 3, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.85.105 pertaining to Medicaid fee schedules and effective dates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 25, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-978 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 395 of the 2022 Montana Administrative Register, Issue Number 6.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to April 1, 2022. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State May 3, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2021. This table includes notices in which those rules adopted during the period November 19, 2021, through April 29, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 or 2022 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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